

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Unbundled Access to Network Elements)	CC Docket No. 04-313
)	
Review of the Section 251 Unbundling)	CC Docket No. 01-338
Obligations of the Incumbent Local)	
Exchange Carriers)	

**PETITION FOR EMERGENCY CLARIFICATION
AND/OR ERRATA**

The Association for Local Telecommunications Services, Alpheus Communications, LP, Cbeyond Communications, LLC, Conversent Communications, LLC, GlobalCom, Inc., Mpower Communications Corp., New Edge Networks, Inc., OneEighty Communications, Inc., and TDS Metrocom, LLC., respectfully seek clarification of, and/or issuance of an *Errata* concerning, the *Interim UNE Order*.¹

I. The Commission Should Clarify That Change of Law Provisions Shall Not Take Place Until At Least Six Months After Publication of the *Interim UNE Order* in the Federal Register

The *Interim UNE Order* seeks to maintain the *status quo* as reflected in interconnection agreements as of June 15, 2004 for six months from publication of the Order in the Federal Register. In the *Interim UNE Order*, the Commission also found that it should not restrict change-of-law proceedings from “presuming an ultimate Commission holding with respect to some or all of these elements, but under any such presumption the results of such proceedings must reflect the

¹ *In the Matter of Unbundled Access to Network Elements, Review of the Section 251 Obligations of Incumbent Local Exchange Carriers*, CC Docket Nos. 04-313 and 01-338, Order and Notice of Proposed Rule Making (“*Interim UNE Order*”) (rel. August 20, 2004). The filing entities reserve the right to supplement this request or otherwise seek reconsideration of any aspect of the *Interim UNE Order*.

transitional structure set forth in” the *Interim UNE Order*.² However, paragraphs 22 and 23 of the *Interim UNE Order* as written are not consistent with the transitional structure adopted by the Commission because it does not provide for this six-month period for implementation of change-of-law issues. Instead, in an obvious oversight and error, this paragraph states that the earliest possible date that rates, terms or conditions resulting from change-of-law proceedings may be implemented is the date of publication of the *Interim UNE Order* in the Federal Register.

Permitting ILECs to implement change of law provisions prior to the end of the initial six-month transition period would undermine the purpose of preserving for six months the *status quo* as reflected in interconnection agreements as of June 15, 2004. Further, this could seriously harm CLECs by permitting ILECs (if they are successful in change of law proceedings) to disrupt the *status quo*.

Accordingly, consistent with the transitional structure contained in the *Interim UNE Order*, Cbeyond requests that the Commission clarify that ILECs may not change the rates, terms and conditions of their interconnection agreements pursuant to change-of-law proceedings before the earlier of (i) six months after publication of the *Interim UNE Order* in the Federal Register, or (ii) the effective date of the Commission’s forthcoming final unbundling rules. Specifically, the Commission should correct the relevant sentences in paragraphs 22 and 23 of the *Interim UNE Order* to add the underlined language: “In no instance, however, shall the rates, terms and conditions resulting from any such proceeding take effect before the earlier of (1) six months after Federal Register publication of this Order, or (2) the effective date of our forthcoming final unbundling rules.”

2 *Interim UNE Order* at ¶ 22.

II. The Commission Should Clarify That Interim UNE Rates May Be Reduced As Well As Increased As Directed by a State Commission

In the *Interim UNE Order*, the Commission required ILECs to continue to provide, for an initial transition period ending six months after publication of the *Interim UNE Order* in the Federal Register, unbundled access to switching, enterprise market loops and dedicated transport under the same rates, terms and conditions that applied under their interconnection agreements as of June 15, 2004.³ The Commission further provided, however, that rates in effect as of June 15, 2004 could be superseded by “a state public utility commission order raising the rates for network elements.”⁴ However, the Commission did not explicitly provide that June 15, 2004 UNE rates would also be superseded by rate reductions ordered by state Commissions. ILECs will undoubtedly interpret the current language of the *UNE Interim Order* to exempt them from reducing UNE rates if they are mandated by a state Commission.

The Commission gave no explanation as to why it did not include language clearly permitting rate reductions as well as rate increases. A substantial explanation would have been required if the Commission had intended this lopsided result. A substantial explanation and justification would also have been required for the Commission to preempt state Commissions with respect to rate reductions. For these reasons, the exclusion of rate reductions was apparently an oversight rather than a considered decision.

A number of states have recently ordered UNE rate reductions and others have proceedings underway which may be concluded in the next six months. The Illinois Commerce Commission, following an extensive examination of UNE loop rates, issued an order on June 9, 2004 that not only

³ See *Interim UNE Order* at ¶¶ 1 and 29-30.

⁴ *Id.* at ¶ 21.

significantly increased certain UNE loop rates and nonrecurring charges for certain combinations of UNEs, but also decreased recurring and interim nonrecurring DS1 rates for UNE loops.⁵ These increased and decreased rates became effective pursuant to a state tariff filing effective June 25, 2004, just 10 days after the June 15, 2004 cut-off date established in the *Interim UNE Order*. Unless corrected, the unintended consequences of the *Interim UNE Order* would be an unlawful preemption of a state approved tariff offering DS-1 UNEs at reduced prices as well as interconnection agreements that provide for UNE prices as established by state Commissions.

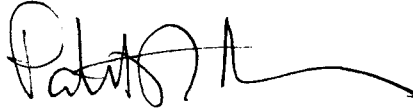
The Commission should promptly clarify paragraphs 1, 21, and 29 of the *Interim UNE Order* that any rate reductions ordered by state Commission decisions that became effective on or before June 15, 2004 are not subject to any limitations imposed by the transition scheme adopted in the *Interim UNE Order* and that any new state decisions ordering rate reductions may be implemented during the initial six-month transition period. Specifically, the Commission should correct the relevant portions of these paragraphs to add the underlined language: “These rates, terms, and conditions shall remain in place until the earlier of the effective date of final unbundling rules promulgated by the Commission or six months after Federal Register publication of this Order, except to the extent that they are or have been superseded by (1) voluntarily negotiated agreements, (2) an intervening Commission order affecting the unbundling obligations (*e.g.*, an order addressing a pending petition for reconsideration), or (3)(with respect to rates only) a state public utility commission order raising or reducing the rates for network elements.”

⁵ *Illinois Bell Telephone Company Filing to Increase Unbundled Loop and Nonrecurring Rates (Tariffs filed December 24, 2002)*, Case No. 02-0864, Order (I.C.C. June 9, 2004).

III. CONCLUSION

Accordingly, the Commission should immediately issue a Clarification Order or Errata as described herein.

Respectfully Submitted,



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